

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:14-cv-00600-MOC

**ERIC WHITENER,**

Petitioner,

Vs.

**UNITED STATES OF AMERICA,**

Respondent.

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ORDER

**THIS MATTER** is before the court on petitioner's Motion for Extension of Time (#36) to file his reply. Petitioner states that he cannot file his reply until this court resolves his Motion to Strike [the Respondent's] Exhibit 1 (#34). Petitioner states that the excerpts from the transcripts relied on by the government should be stricken because they do not reference the proceeding from which they were drawn and are not verified by the court reporter who transcribed the proceeding, be it a grand jury hearing, a motion hearing, or trial. Petitioner has correctly cited the prevailing standards concerning evidentiary exhibits this court can consider. The response to that motion was due July 6, 2015, but no response was filed by Respondent.

While the lack of verifications from court reporters who may have long departed from the court in the nearly three decades since this case was resolved is understandable, the court does agree with petitioner that the government should be tasked with identifying the speaker as well as the proceeding at which such witness testified. Further, as to verification, the court finds that since these materials are not in usual form, some sort of "best evidence" verification is appropriate. Such a verification should state that attempts to retrieve originals were unsuccessful, identify the source

of the materials produced, and state that such records are true and correct copies of materials contained in the USAO archived files, kept in the ordinary course of that office's business.

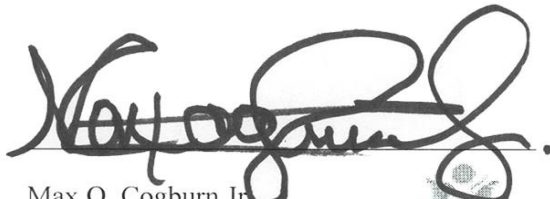
**ORDER**

**IT IS, THEREFORE, ORDERED** that petitioner's

(1) Motion to Strike [the Respondent's] Exhibit 1 (#34) is GRANTED in part and DENIED in part as herein provided, and the government shall conform its exhibit as instructed above not later than July 31, 2015:

(2) Motion for Extension of Time (#36) to file his reply is ALLOWED, and petition is granted up to and inclusive of August 31, 2015, to so Reply.

Signed: July 13, 2015



Max O. Cogburn Jr.  
United States District Judge

